STATE OF WASHINGTON

DEPARTMENT OF REVENUE

WAC 458-20-273 (Renewable Energy System Cost Recovery)

CONCISE EXPLANATORY STATEMENT
(Prepared by Mark E. Bohe)

Anticipated Adoption: July 2006

RCW 34.05.325 requires that an agency prepare a concise explanatory statement before it files an adopted rule with the Code Reviser. This statement is to explain the agency's reasons for adopting the rule, identify the differences between the text of the proposed rule as published and the text of the rule as adopted, and summarize all comments received regarding the proposed rule and respond to those comments by category or subject matter.

a) Agency's reasons for adopting WAC 458-20-273

Rule 273 interprets Substitute Senate Bill 5101, which was passed in the 2005 Regular legislative session. This law provides incentive payments to support renewable energy systems. This law is now codified and found at RCW 82.16.110, and subsequent sections 120, 130 and 140. The customers' investment cost recovery incentive payment covers the purchase and use of renewable energy systems that produce electricity, such as: (1) solar energy systems, (2) wind generators, and (3) certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen free container. Any individual, business, or local government that purchases and uses such a system may apply for an incentive payment from the light and power business that serves their property. The light and power business then gets a credit on its public utility tax for the amount it pays to customers as incentive payments. A light and power or gas distribution business itself will not qualify for an incentive payment. This program applies to measured customers' renewable energy system kilowatt-hours generated between July 1, 2005 and June 30, 2014.

The Department is administering a tax credit program under our public utility tax jurisdiction. The Department is not regulating utilities or businesses involved in the energy transmission and distribution system. The Department interprets the goal of the legislation to be the development of a market for qualifying renewable energy systems and the development of a manufacturing

base for these systems in the state of Washington. To better achieve this goal, the Department has written this rule for the benefit of potential customers of renewable energy systems in a simple question and answer format. This simple format also achieves the goal of simplified and more readable regulations for the general public.

b) Description of differences of text between proposed rule as published and rule to be adopted.

The first amendment of the proposed rule as published is in the preamble as follows:

> **WAC 458-20-273 Renewable energy system cost recovery.** The customer investment cost recovery incentive payment ("incentive payment") covers the purchase and use of renewable energy systems that produce electricity, such as: Solar energy systems, wind generators, and certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container. Any individual, business, or local government that purchases and uses such a system may apply for an incentive payment from the light and power business that serves their property. Your light and power business may make payment to you in the form of a credit offsetting the amount you owe on your power bill. The light and power business then gets a credit on its public utility tax for the amount it pays to customers as incentive payments. The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, the department will only audit light and power businesses to determine whether their claimed credit amount equals the amount of the total of customers' incentive payments, whether they proportionally reduced the payments to each customer by an equal percentage if the limit of total allowed payments is reached, and whether the customer payments are based on measured production of the renewable energy systems. A light and power or gas distribution business will not qualify for an incentive payment. This program applies to measured customers' renewable energy system kilowatt-hours generated between July 1, 2005, and June 30, 2014.

The next amendment of the proposed rule as published is a change in the Transition Rule for the period July 1, 2005, through June 30, 2006, located in Question & Answer No. 4 as underlined.

> There is a special transition rule for the first annual period from July 1, 2005, through June 30, 2006. For only the first year of the incentive program, recognizing that each utility will establish its own procedures and requirements for metering the output of customers' renewable energy systems, the department will accept kWh production readings taken from the inverter or from an owner installed production meter. The owner must report the reading of the meter from July 1, 2005 (or make a good-faith estimation if no reading exists) and the reading on June 30, 2006. Your June 30, 2006 reading may be

relied upon by your light and power business as the first reading for the subsequent year July 1, 2006, through June 30, 2007. Further, if your light and power business decides to replace your production meter during the subsequent year July 1, 2006, through June 30, 2007, it may rely on the last reading on your prior meter before its replaced. You must also report the array size in DC watts. This information will be used to validate reported watt hours for the first year. Your participating light and power business is not required to perform independent reading or monitoring of your system's electric generation during the first year. Further, for the first year only, the power and light business serving your property shall have one hundred twenty days to notify you whether your incentive payment is authorized or denied and shall process your annual payment, if any, by January 31, 2007. You must file your request for system certification with the department of revenue no later than September 30, 2006. Each light and power business will decide its own deadline for submission of your annual application for incentive payment during this first year.

Another amendment of the proposed rule as published is located in Question and Answer No. 5 and is underlined below:

(5) **What are the possible procedures you and your light and power business may follow in setting up your incentive payments?** Recommended procedures you should follow when requesting your light and power businesses to set up your incentive payments and the possible procedures your light and power business may follow are as follows:

. First, since participation under this incentive program is voluntary for light and power businesses, contact the light and power business serving your property and ask whether it is participating and what application procedures you must follow.

. If your light and power business is participating in the incentive program, then you submit an application to your light and power business.

. You submit to your light and power business proof that your renewable energy system is certified by the department of revenue for the incentive payment program.

. You submit to the light and power business a copy of the approved certification and letter from the department of revenue. You should submit this information to the light and power business before August 1st in order to receive payment for any production that occurred prior to July 1st.

. If your light and power business approves your application, then it will require a signed agreement that it will provide to you.

. You or your licensed electrical contractor or certified electrician obtain an electrical permit and install the system. (A licensed electrical contractor or certified electrician must install the system, unless you perform the work yourself on your home with the help of an uncompensated volunteer who assists you. See WAC 296-46B-925(13) for guidance on the proper installation of your system.)

. Once installation is complete your renewable energy system must pass a final electrical inspection from the local code official.

. Your local light and power business will send a utility serviceman to inspect your system and may install an electric production meter if one meeting its qualifications is not already installed.

. Your production meter is read by the light and power business at least annually and it processes your annual incentive payment.

. Your light and power business notifies you within sixty days whether your incentive payment is authorized or denied.

. Your light and power business calculates annual production payments based on the meter reading or readings made prior to the accounting date of July 1st.

. Your incentive payment check (or credit to your account) is sent to you by your light and power business on or before December 15th.

A further amendment of the proposed rule as published is located in Question and Answer No. 6 and is underlined below:

(6) **What is the formal agreement between me and my light and power business?** The formal agreement between you and the light and power business serving your property governs the relationship between you and your light and power business. This document may:

. Contain the necessary safety requirements and interconnection standards;

. Allow the light and power business the contractual right to review your substantiation documents for four years, upon five working days' notice;

. Allow the light and power business the contractual right to assess against you, with interest, for any overpayment of incentive payments made to you;

. Delineate any extra metering costs for an electric production meter to be installed on your property;

. Contain a statement allowing the department of revenue to send proof of your system's certification electronically to your light and power business, which will include your department of revenue taxpayer's identification number; and

. Contain other information required by the light and power business to effectuate and properly process your incentive payment.

Another amendment of the proposed rule as published is located in Question and Answer No. In the third sentence the word "development" was added. Now the third sentence reads:

"An economic development kilowatt-hour is the actual kilowatt-hour measurement of your generated electricity multiplied by the appropriate economic development factor."

The last amendment of the proposed rule as published is located in Question and Answer No. 20 and is underlined below:

> (20) **Are individuals, businesses and local governments that are not interconnected to the electric transmission and distribution system and who are not customers of a light and power business eligible for the incentive payment program?** Generally, only renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible for participation in the incentive payment program. The term property means within the established boundaries of the lot served by the light and power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.
>
> For example, if a customer of a light and power business living in a home connected to the power grid builds a studio addition served by a renewable energy system that is not connected to the power grid, that customer is eligible for the incentive payment program.
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> Another example, if a customer of a light and power business owning a manufacturing facility connected to the power grid builds an unattached vehicle garage on the same lot that the factory is located and the garage is not interconnected, the renewable energy system supplying electricity to this garage is eligible for the incentive payment program.
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> If the facts are the same as above, but the manufacturing facility's owner buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid, then the renewable energy system attached to the garage would not be eligible for the incentive payment program.

c) Summary of comments received and Department of Revenue's response.

The Northwest Energy Coalition, through Danielle Dixon, Senior Policy Associate, disagreed with our conclusions that participation in this program is optional for a light and power business. NW Energy believes the legislation is not clear on this point. They argue that Section 3(1) of the law states that "any individual, business or local governmental entity ... may apply to the light and power business serving the situs of the system …" and Section 3 (4)(b) gives the light and power business 60 days to inform the customer generator if the incentive payment will be authorized or denied. The utility may consult with the climate and rural energy development center to determine incentive eligibility. Thus they argue the law provides that denial of an incentive payment can occur because a system did not meet eligibility requirements. They believe the law does not specify that utilities can deny payment because they opt not to participate in the program. Further, the bill reports for SB5101 are completely silent on the issue regarding whether participation by utilities in the program is mandatory or discretionary.

NW Energy further argues all electric utilities in Washington already are required to make net metering available to customers under RCW 80.60 for wind, solar and animal waste biogas installations. They claim SSB 5101 builds on this existing law, as described in the Legislature's Final Bill Report. They believe that all utilities should be required to offer this benefit to their customers as long as the customers and their installed systems pass the basic eligibility requirements. NW Energy notes they are sympathetic to the resource constraints faced by small utilities, and support procedures for minimizing implementation burden on their staff.

NW Energy continues by stating if tax credits typically are discretionary in nature, there remains a solid policy argument for ensuring at a minimum that a utility that decides to offer the incentive payment to customers continues to do so every year. According to the Substitute House Bill Report, "Investment cost recovery incentives are created to encourage investment in renewable energy projects." NW Energy notes that under the current proposed rule, a utility could offer the incentive in some years and not in others, creating confusion and uncertainty for its customers – and not accomplishing the goal of encouraging investment in renewable energy projects.

Melissa Metzler of Tacoma Power and Andy Hemstreet of Puget Sound Energy testified against NW Energy's position. Mr. Hemstreet noted that Puget Sound Energy would withdraw from the program if the utilities' involvement was made mandatory and that Puget Sound Energy has already made clear that they would protest as strongly as possible against forced inclusion of utilities. Bruce Carter of Clark Public Utilities spoke in support of NW Energy and for making the involvement of the utilities mandatory.

Department's response:

The Department researched NW Energy's first comment and found the language at RCW 82.16.120(5) controlling on the issue. It states: "The investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for the credit to the participating light and power business." It is the Department's belief that the use of the word "may" means that the utilities' participation is discretionary and that the substance of this provision is clear that "may" applies to the participating light and power business.

On NW Energy's next point, this program is a tax credit on the utilities' public utility tax liability. Credits are always discretionary to the taxpayer. Credits are never required. Further, a taxpayer has the right to use and apply for a credit during one taxable year and not during another. The Department does not believe the statutory language allows the Department to mandate that utilities who choose to participate may not later withdraw from participation in the incentive payment program in later years.

NW Energy further states that questions 6 & 15 provide the utility with the ability to assess interest on overpayment, but do not provide similar interest to customer-generators if they were underpaid. The law (Sec 3(4)(c)(i)) provides for collection of overpayment at the discretion of the utility, but requires interest to be assessed if the utility decides to collect overpaid funds. The law further states that "if it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment." NW Energy believes that a balanced approach should be used so that customers who were underpaid also receive appropriate interest.

Department's response:

The Department notes that the operative language is found at RCW 82.16.120(4)(c)(i) and states in part: "…If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of the incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and shall add thereto interest on the amount. Interest shall be accessed in the manner the department assesses interest upon delinquent tax under RCW 82.32.050." The statute is silent as to whether interest applies to an incentive that has been paid in an amount less than the correct amount of the incentive payable. The Department does not believe it has the authority to mandate that interest be paid on such underpayments.

The third point argued by NW Energy regards the sixth bullet in question 5, which refers to the homeowner/business or electrical contractor obtaining an electrical permit and installing the system. NW Energy believes this bullet should clarify that owners can perform electrical work on their own property unless the building is for rent, sale or lease. In a single family residence, the owner may be assisted by a friend as long as the owner is present while the work is being performed and the friend receives no compensation for the work. NW Energy suggests that the bullet also should reference the basis for this as WAC 296-46B-925 (13) (which states, "A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.")

Department's response:

We have incorporated language to address this issue.

Rich Feldman, Washington State Coordinator, Apollo Alliance, stated the position that the rule as proposed does not accurately portray the requirements for owner installation and exemption from state law requirements to use a licensed electrical contractor and certified electricians for electrical work. In addition, he argues the proposed rule should provide information to make incentive payment recipients aware of the potential for them to be involved with schemes by unlicensed installers to circumvent state law and the state electrical code and the potential penalties for participating in such schemes. This submission also included comments by Brian Ugi of Peak Electric about an underground and unlicensed installer business operating in Washington state for many years. Further, this comment contained a large amount of very precise and detailed technical information in support of its position.

Department's response:

We believe this comment has merit and incorporated language to address this issue of using licensed electrical contractors and certified electrician. However, the Department did believe it appropriate to add language warning consumers of schemes by unlicensed installers or detailed technical information provided.

Michael Little, Energy Planning Supervisor of Seattle City Light proposed changes to sections (2) and (5) of the proposed rule to make the process of the application to the utility precede the system's installation and certification. Further, he requested the inclusion of a reference to the interconnection standards in question (6).

Department's response:

We understand the utilities' concern that their application process should be first, before the system's installation and certification. However, the statute's language has certification occurring first, before the annual application to the utility and we can not alter the statute's language in the regulation. The suggested new language for question (6) regarding interconnection standards was added.

Ellen Laniman of Energy Solution, representing Ferry County PUD, Franklin PUD and Okanogan County Electric Cooperative made many suggestions that were incorporated into the amendments. Many were editorial in nature but two were substantive. One is that the transition rule needed clarification about how to handle replacing the existing production meter and other matters in year two of the program. The second suggestion regarded question 5, stating that the utility may use an existing production meter if it is of good quality.

Department's response:

The Department incorporated language to address these issues.

Chris Fate of Snohomish PUD requested changes in the preamble addressing two issues. First, discussion of payment to customers in the form of a credit offset on billings. Second, the Department had verbally described what they would audit for on this program; Mr. Fate requested the incorporation of this language describing the Department's auditing of utilities regarding this incentive payment program.

Department's response:

We incorporated language in the preamble addressing both issues.

Representatives of Tacoma Power submitted a question. They asked how to handle a situation where their existing customer adds an addition to a house Tacoma Power serves that is powered by a renewable energy system, which is not connected to the grid.

Department's response:

This question resulted in the Department amending question 20 to address the issue on interconnected and non-interconnected renewable energy systems serving a utility customer's property.